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418368—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 590

STANDARD OIL COMPANY OF NEW JERSEY,
PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court (R. 8) is reported in 5 U. S. Cust. Ct. 166. The opinion of the United States Court of Customs and Patent Appeals (R. 13) is reported in C. A. D. 174, 77 Treas. Dec., Advance Sheets No. 1 (July 3, 1941), page 39.

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was entered on June

9, 1941 (R. 18). The petition for a writ of certiorari was filed on September 6, 1941. The jurisdiction of this Court is invoked under section 195 of the Judicial Code, as amended (U. S. C., title 28, sec. 308).

QUESTION PRESENTED

A steamship was bought from American owners by British purchasers for reduction to scrap metal upon its arrival in Scotland. Petitioner sold imported fuel oil for use by the steamship on its voyage from New York to Scotland, made in ballast without cargo or passengers. The question is whether the vessel was "actually engaged in foreign trade" so as to be exempt from the tax on fuel oil.

STATUTES INVOLVED

Section 601 (c) (4) of the Revenue Act of 1932 (47 Stat. 169, 259–260):

> (c) There is hereby imposed upon the following articles sold in the United States by the manufacturer or producer, or imported into the United States, a tax at the rates hereinafter set forth, to be paid by the manufacturer, producer, or importer:
>
> * * * * *
>
> (4) Crude petroleum, ½ cent per gallon; fuel oil derived from petroleum, gas oil derived from petroleum, and all liquid derivatives of crude petroleum, except lubricating oil and gasoline or other motor fuel, ½ cent

per gallon; gasoline or other motor fuel, 2½ cents per gallon; lubricating oil, 4 cents per gallon; paraffin and other petroleum wax products, 1 cent per pound. The tax on the articles described in this paragraph shall apply only with respect to the importation of such articles.

Revenue Act of 1932, as amended (48 Stat. 256):

SEC. 630. *Exemption from Tax of Certain Supplies for Vessels.*

Under regulations prescribed by the Commissioner, with the approval of the Secretary, no tax under this title shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this title, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of section 601 (b).

STATEMENT

The stipulated facts may be summarized as follows: Petitioner sold 1,640,944 gallons of imported

fuel oil, which had been withdrawn from bonded warehouse, for use as fuel supplies on the steamship *Leviathan*. The ship, then at the port of New York, had been bought from its American owners by British purchasers for reduction to scrap metal upon its arrival in Scotland. The *Leviathan* left New York on January 22, 1938, in ballast, without cargo or passengers, and made the voyage from New York to Rosyth, Scotland, under her own power. The oil sold by petitioner was used as fuel between New York and Rosyth (R. 6–8).

The Collector of Customs at the port of New York assessed one-half cent per gallon against the 1,640,944 gallons of fuel oil, pursuant to section 601 (c) (4) of the Revenue Act of 1932, and denied any exemption from said tax under section 630 of the Revenue Act of 1932, *supra*. Petitioner filed a protest against the collector's denial, contending that the fuel oil was sold as fuel supplies to a vessel actually engaged in foreign trade within the meaning of section 630, and therefore entitled to exemption from the tax (R. 4).

The United States Customs Court overruled the protest and rendered judgment for the United States (R. 8–11). The United States Court of Customs and Patent Appeals affirmed the judgment of the United States Customs Court (R. 13–18).

ARGUMENT

Section 630 of the Revenue Act of 1932, *supra*, exempts from the fuel oil tax any oil used as fuel by vessels "actually engaged in foreign trade." In the ordinary use of the phrase, a vessel which sails, without cargo or passengers, to a yard, there to be converted to scrap, is the object of, and is not "engaged" in, trade.[1] Congress may be supposed to have used the term in its ordinary sense. *Maillard* v. *Lawrence*, 16 How. 250, 261; *Nix* v. *Hedden*, 149 U. S. 304; *Houghton* v. *Payne*, 194 U. S. 88, 99.[2]

But even if the sale of the *Leviathan* meant that it was engaged in trade, that trade was not foreign. Its sale was consummated by delivery in the United States (R. 7). Obviously the navigation of the ship from New York to Scotland was an act separate from the sale and constituted another and different transaction. The sale of the vessel and its subsequent navigation were not sufficient to justify a holding that the vessel was

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[1] Funk & Wagnalls New Standard Dictionary defines "foreign trade" to be: "the commercial interchange of commodities from different countries; export and import trade."

[2] Nothing in the legislative history of section 630 indicates that Congress contemplated the inclusion of a transaction like the one in the instant case in the definition of "foreign trade." See S. Rpt. 58, 73d Cong., 1st Sess., 77 Cong. Rec., Part III, pp. 3212–3214.

actually engaged in foreign trade within the meaning of that term as used in section 630, *supra.*

Neither *Gibbons* v. *Ogden,* 9 Wheat. 1, nor *McGoldrick* v. *Gulf Oil Corp.,* 309 U. S. 414, upon which petitioner relies to sustain its contention that the *Leviathan* was engaged in foreign trade, are in point. Both involve only issues of the constitutional reach of the federal government over navigation and foreign trade. Neither was concerned with the question of the statutory interpretation of section 630 of the Revenue Act of 1932.

Statutes granting tax exemptions are to be strictly construed. *Memphis & Little Rock Railroad Co.* v. *Railroad Commissioners,* 112 U. S. 609, 617–618; *Yazoo & Mississippi Valley Railroad Co.* v. *Thomas,* 132 U. S. 174, 185; *Pacific Co., Ltd.* v. *Johnson, State Treasurer,* 285 U. S. 480, 491; *Oklahoma ex rel. Oklahoma Tax Commission* v. *Barnsdall Refineries, Inc.,* 296 U. S. 521. The construction placed upon the statute by the court below is reasonable, and is consistent with rules of construction long approved by this Court.

CONCLUSION

The decision below is correct and is not in conflict with any other decision. The case turns on its peculiar facts and presents no question of large public importance. The petition should be denied.

Respectfully submitted.

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